



## Lawyer Assistance Programs Provide a Lifeline

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➤ Et si vous vous inquiétiez pour un confrère en difficulté ? Et si vous vous inquiétiez de votre propre santé mentale ou de votre consommation de substances ? L'exposition des avocats à des traumatismes, les exigences du système accusatoire et d'autres facteurs de stress nous exposent à des problèmes de santé mentale. Les programmes d'assistance aux avocats (PAA) constituent une ressource gratuite et confidentielle de soutien, d'orientation et d'espoir.

➤ ¿Qué pasaría si estuviera preocupado por un colega que puede estar teniendo problemas? ¿Y si le preocupara su propia salud mental o el consumo de sustancias? La exposición de los abogados a traumas, las exigencias del sistema contencioso y otros factores estresantes nos exponen a problemas de salud mental. Los Programas de Asistencia a Abogados (PAA) ofrecen un recurso gratuito y confidencial de apoyo, derivación y esperanza.



### Introduction

What would you do if a lawyer told you that their opposing counsel, a partner at your law firm, smelled of alcohol and slurred her words at a deposition? What would you do if your paralegal was concerned about an associate with an important deadline, and when she knocked on the associate's door and went into his office, he was staring at the same piece of paper she had seen an hour before, and he yelled at her to leave him alone? You know you must act. Now what? Lawyer Assistance Programs (LAPs) are ready to help.

### A Profession at Risk<sup>1</sup>

In February 2016, the *Journal of Addiction Medicine* published the results of a landmark study conducted

1. Patrick Krill, Ryan Johnson & Linda Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICT. MED. 46 (2016). Jaffe, David, Bender, Katherine, Organ, Jerome, 'It is Okay to Not Be Okay': The 2021 Survey of Law Student Well-Being, *University of Louisville Law Review*, June 2022; Swenson, David, Bibelhausen, Joan, et al., *Stress and Resiliency in the U.S. Judiciary*, *ABA Journal of the Professional Lawyer*, 2020.

by the American Bar Association Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation. The study, entitled *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, provided national figures on issues of concern in the legal profession. The sample space consisted of 12,825 licensed, employed attorneys. Among the findings:

- 20.6% of respondents met the criteria for mild to severe alcohol use disorder;
- Men reported higher rates of depression and women reported higher rates of anxiety and stress;
- The overall rate of depression was 28% and anxiety was 19%;
- 11.5% reported suicidal thoughts at some time during their careers;
- The rates of mental health and substance issues were significantly higher in respondents up to 30 years old who had worked in the profession for ten or fewer years, contrary to earlier studies in which the levels increased with longevity in the profession and age;
- Judge and law student surveys indicated higher than average rates of unhealthy substance use and mental health issues;
- Newer attorneys in law firms reported the highest overall rate of distress, including problematic alcohol use, depression, anxiety, and stress symptoms with a negative impact; and
- Barriers to seeking help included “not wanting to find out they needed help” and “concerns regarding privacy or confidentiality.”

## Understanding the Issue

Unresolved stress is a predictor for depression and substance-use disorders, and the legal profession certainly has its share. For lawyers, the primary substance use issue is alcohol, although there are also concerns with cocaine, methamphetamine, and prescription drugs, including opiates and stimulants, as well as compulsive behaviors involving gambling, sexual compulsivity, and the internet. These disorders are a brain disease in which there is a physical and psychological need for substances or processes. While they are not necessary to sustain life, they are deemed to be so by the user.

Alcoholics<sup>2</sup> can often function at very high levels and will go to great lengths to protect their relationship with alcohol and its supply. Yet there can be harm to the clients or the organization because of their reduced ability to deal

with complex issues and problems. Addiction can have a considerable impact upon coworkers – attorneys and other legal professionals – because this is a family disease, and the work family is affected. Support professionals may be asked to or may feel compelled to engage in behavior that protects or enables the lawyer in their addiction, because that may seem necessary or important to protect their own job. Co-dependency occurs when another modifies his or her behavior to adapt to the behavior of the user. The bottom line is that anything seen as a threat to the use will be seen as a threat to the individual, and this can be exceedingly difficult in a power relationship. This complicates the investigation.

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What should you look for? Most important are changes in behavior. Are there small changes, such as attention to personal appearance, lack of punctuality, and reduced performance throughout the day? Are there bigger changes that grow slowly, such as missed or late appointments and deadlines, phone calls that are not returned promptly, and dishonesty? Has the attorney had personal problems, such as a divorce? Have support colleagues been asked to make excuses, cover for absences, or even lie? While these may not specifically point to addiction, they do point to an issue.

The individual who is suffering from depression or another mental illness may also create a codependency situation with support professionals as they try to hide their increased feeling of helplessness. This can arise as hostility, anger, or increasing excuses as to why a certain task has not been completed or a deadline has not been met. Normal workflow will change to a series of emergencies as the lawyer is only able to function when there is no other choice, and then may do so poorly. Support colleagues will scramble to anticipate what is coming and to lessen the impact when that emergency occurs, or they may try to cover for the lawyer by taking care of things that they may not fully understand.

What else should you look for? A person who is depressed may feel very little joy in the things that normally bring pleasure. While there may be an appearance of sadness, there may also be simply a lack of response or a “flat affect.” There may be greater anxiety as depression and anxiety may go hand in hand, or anxiety may stand alone. A person who is overly anxious will appear to be overwhelmed and encumbered.

Age-related cognitive-impairment issues are beginning to take greater prominence as the population ages. A lawyer may forget something they already completed or forget something they agreed to do. While it is never your role to diagnose, you can flag conduct that shows that something is wrong, and it is best to deal with the situation promptly.

2. The term “alcoholic” is often used by someone identifying themselves as having a problem with alcohol. It is used here for the sake of brevity and its application to those with other substances or compulsive behaviors can be inferred. “Addiction” refers to a diagnosis of a substance use or compulsive behavior disorder.

A support professional may believe they are accommodating the lawyer, but in fact, they are more likely enabling, which will typically only result in problems. The impaired lawyer will become more impaired, and possibly more intimidating, and the clients and organization may be harmed. Ethical and malpractice problems may be looming. *If you think it will get better by itself, it will not.*

Now, imagine you are that lawyer. You used alcohol to calm your nerves for years, but it seemed like you kept needing more, and you were losing control. Or maybe you just could not focus effectively. You attended to emergencies, accomplished far less, or on some days you struggled to do anything. People are starting to notice, and you are not sure what to do. Ask these questions, whether it is for yourself or someone you care about:

## Regarding Your Use of Alcohol, Is There a Problem?

The CAGE questionnaire (based on key words in the questions) is a quick tool to assess whether there may be a problem with alcohol, other substances, or behaviors.

- Have you ever felt you should **C**ut down on your drinking?
- Have people **A**nnoyed you by criticizing (or even commenting on) your drinking?
- Have you ever felt bad or **G**uilty about your drinking?
- Have you ever had a drink first thing in the morning to steady your nerves or to get rid of a hangover (**E**ye opener)?

## Regarding Mental Health, Is There a Problem?

These questions address depression and anxiety. In the past two weeks, have you:

Been feeling very tired, sad, blue, irritable, or depressed?

Lost interest and pleasure in activities and interests you usually care about?

Had difficulty concentrating, remembering, or deciding?

Felt unusual panic or worrying?

Have you ever considered suicide?

Lawyers do not ask for help because they do not want others to know they may have a problem. This stigma keeps us from asking for or offering the help we need and that would benefit many of us. We seek a weakness in each other's positions on legal matters and we fear that our opponent will zero in on any "weakness" in us.

## Lawyer Assistance Programs (LAPs)

Some LAPs, like Minnesota's, are independent non-profit organizations. Some are part of the bar association, and

some operate under the auspices of the judicial branch. Most help lawyers, judges, and law students. Some, including Minnesota, also assist families and other legal professionals. Some LAPs will monitor attorneys who are subject to discipline when a mental health issue, including substance use, is present. However, these are referrals from professional regulators, and no referrals are made to ethics counsel or board. In those cases, with permission, the LAP reports on the attorney's progress. For the attorney who reaches out to the LAP directly, there is no reporting. Many LAPs, including Minnesota, maintain absolute confidentiality and do not work with the ethics authority or communicate in any way.

Impairment due to mental illness and substance use has long been an issue for the legal profession. LAPs have been a resource and a lifeline for decades and are ready to help. Minnesota's Lawyers Concerned for Lawyers (LCL), founded in 1976, is the oldest continuing program in the U.S. Every other state, most Canadian provinces, and the United Kingdom have active programs<sup>3</sup>. Times and technology have changed since LCL's founding, but one thing remains the same—LAPs are committed to providing help and hope to the legal profession. This commitment fuels the LAP mission to encompass a broad range of issues facing the legal profession, including mental health, substance use, stress and exposure to trauma, and well-being.

Confidentiality is the cornerstone of the work of LAPs and is critical to integrity and trust. An individual who is seeking help may reach out to the LAP, as can a colleague or family member who is concerned about them, in confidence. While these examples represent the Minnesota LAP, all LAPs are here to offer the help you need, whether it is well-being strategies or immediate assistance with critical challenges.

What if you were the lawyer seeking help? The LAP staff will begin with a conversation regarding your concerns, what precipitated the call, and will begin to identify resources and referrals. LAPs treat each person uniquely and without judgment or assumptions. Concern about your drinking does not mean abstinence is the only option, for example. Feelings of anxiety can lead to a professional referral, as well as profession-specific resources.

The LAP will provide options so you can consider appropriate next steps. This may be a referral to a therapist, an assessment, support groups such as Alcoholics Anonymous or for mental-health topics, peer support, treatment, and more. Most lawyers are concerned about their practices or their jobs. Stigma about seeking help remains a challenge for many. Like never before, lawyers are accepting that asking for help is good for the organization and the lawyer. The LAP can talk about how to approach your employer and how to

3. [https://www.americanbar.org/groups/lawyer\\_assistance/resources/lap\\_programs\\_by\\_state/#CN](https://www.americanbar.org/groups/lawyer_assistance/resources/lap_programs_by_state/#CN)

manage your practice as you obtain the help you need. Most lawyers are surprised to learn that the profession can be very understanding. Perhaps most importantly, you will learn that you are not alone. Many who have had similar experiences are thriving today. And sometimes a challenge or a crisis opens a door that you would not otherwise have used.

What if you are concerned about a colleague? The LAP will talk with you to discuss the situation, possible approaches, and available assistance. This can range from coaching on how to talk to the lawyer, including how to best encourage them to use the LAP, to planning an intervention. Your call to the LAP does not trigger a need to act, though if you have an obligation to report another lawyer, contacting the LAP does not remove that obligation. The support of the LAP can be critical if the lawyer is facing professional challenges. The LAP can provide support to you as the concerned person. What is happening to your colleague has an impact on you.

LAPs typically offer assessments and counseling, referrals to other services, including practice assistance during recovery, peer support, and a great deal of helpful information on many different issues in the profession. Some LAPs facilitate interventions, while others refer to outside providers. LAPs can offer guidance on supervisory referrals for evaluation, which may be appropriate if you are concerned about someone's cognitive ability. LAPs are familiar and often work closely with resources, including lawyer and professional specific treatment programs, and their procedures for admission. If the lawyer leaves the practice temporarily to get help, LAPs can provide guidance on reintegration into practice and can support the lawyer as they travel whatever recovery road is identified. LAPs offer hope and many examples of lawyers who are leading happy and productive personal and professional lives because they asked for and received the help they needed.

## Looking Forward

In February 2016, just after the publication of the ABA/Hazelden study, a group of lawyers met at the ABA Midyear Meeting and made a commitment to meaningful change. The National Task Force on Lawyer Well-Being was formed and produced *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* with the intention of "creating a movement to improve well-being in the legal profession."<sup>4</sup> Although the lawyer well-being movement was present within the LAPs, decades earlier, this ABA/Hazelden study helped propel professional organizations, such as the UIA and the ABA, in our courts,

our law schools, and in individual public and private law offices. The National Task Force on Lawyer Well-Being is now an independent non-profit organization, the Institute for Well-Being in Law, and many states have their own well-being task forces and plans.

As a profession, we are accustomed to being reactive, not proactive. Someone must have a legal need for us to have work. We give advice but are reluctant and sometimes even ashamed to ask for what we need and deserve. Changing the culture is a laudable goal and the well-being resources available in our profession have never been better. We can each play a part in creating a culture change by recognizing that zealous lawyering does not mean taking advantage of a colleague who may be struggling. It is critical to recognize that our profession is serving clients and parties during some of the worst times of their lives, and we are on the front lines of every crisis and controversy in our society. This will affect us. We can make a difference by paying attention to each other and reaching out when we are concerned. It can make all the difference.

LAPs can coach any lawyer on how to reach out to someone they may be concerned about, colleagues or family members, and LAPs can talk to you confidentially and nonjudgmentally about concerns you have for yourself. We may wish for less stress, but if we are dealing with anxiety or depression symptoms, or drinking or engaging in other behaviors at levels we know are unhealthy, well-being strategies may not be enough. You may have a condition or a diagnosis, but it does not define you. If these problems do develop, it is not because you did not "do" well-being well enough. Recognizing that we can reduce but not eliminate these issues is part of breaking the stigma. Our cars now have seat belts and airbags, which reduce our risk. But we did not close emergency rooms. LAPs have the resources to support your well-being, but we will always be your emergency room. You need not wait until there is a crisis and you certainly need not wait until you think you have the time. Please reach out. You are why LAPs are here. Once you make that call, you are no longer alone.

LAPs are familiar and often work closely with resources, including lawyer and professional specific treatment programs, and their procedures for admission.

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4. American Bar Association, National Task Force on Lawyer Well-Being, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, 2017. Additional ABA CoLAP materials are at: [https://www.americanbar.org/groups/lawyer\\_assistance/well-being-in-the-legal-profession/](https://www.americanbar.org/groups/lawyer_assistance/well-being-in-the-legal-profession/)

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